

BAY AREA AIR POLLUTION CONTROL DISTRICT

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February 23, 1978

TO: ALL INTERESTED PERSONS

FROM: AIR POLLUTION CONTROL OFFICER

SUBJECT: UPSET/BREAKDOWN REGULATIONS

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Effective February 22, 1978, the Environmental Protection Agency has voided all "malfunction" relief accorded under the rules and regulations of twenty-seven air pollution control districts in the State of California, including the Bay Area Air Pollution Control District. According to the EPA, the exceptions allowed in the regulations of these districts do not conform to the requirements of the Clean Air Act. EPA states: "while it might be appropriate to refrain from enforcing where a malfunction is truly beyond the control of a source, any malfunction provision which allows a regulatory exemption is unacceptable."

The portions of District regulations affected are Regulation 2, §3212 and Regulation 3, §3203. Both Sections are entitled "Upset Conditions, Breakdowns or Scheduled Maintenance." Under these Sections, excessive emissions resulting from mechanical failure of abatement or process equipment, production upsets, or emissions resulting from periodic maintenance of any industrial plant could be forgiven by the District provided the plant followed certain notification and reporting procedures.

Starting February 22, 1978, it is no longer required that industrial plant operators notify the District of such problems. District inspectors have been directed to cite any violations of the District's emission limitations regardless of cause.

Notice of the EPA decision was published in the Federal Register, Volume 43, No. 16, pages 3275-3276, dated January 24, 1978.

DJC:tmc
Attachment

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ronmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attn: David R. Souten, 415-556-7288.

SUPPLEMENTARY INFORMATION: Pursuant to section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions. It is the purpose of this notice to take final disapproval action on the following APCD rules and regulations concerning malfunction:

1. Amador County APCD Rule 404, Upset Conditions and Breakdown submitted on April 21, 1976. EPA proposed to take action on this rule on May 31, 1977 (42 FR 27616);
2. Bay Area APCD Regulation 2, Section 3212, Upset Conditions, Breakdown or Scheduled Maintenance and Regulation 3, Section 3203, Upset Conditions, Breakdown or Scheduled Maintenance submitted on April 21, 1976. EPA proposed to take action on these rules on September 7, 1977 (42 FR 44822);
3. Del Norte County APCD Rule 540, Equipment Breakdown submitted on November 10, 1976. EPA proposed to take action on this rule on June 14, 1977 (42 FR 30394);
4. Fresno County APCD Rule 110, Equipment Shutdown, Startup and Breakdown submitted on June 30, 1972 and previously approved under 40 CFR 52.223 (37 FR 19812). EPA proposed to disapprove this rule on November 1, 1976 (41 FR 47950);
5. Glenn County APCD Rules 95.2, Maintenance of Equipment and 95.3, Malfunction of Equipment submitted on January 10, 1975. EPA proposed to take action on these rules on September 16, 1977 (42 FR 46557);
6. Great Basin Unified APCD Rule 403, Upset/Breakdown submitted on June 6, 1977. EPA proposed to take action on this rule on September 7, 1977 (42 FR 44821);
7. Humboldt County APCD Rule 540, Equipment Breakdown submitted on November 10, 1976. EPA proposed to take action on this rule on June 14, 1977 (42 FR 30395);
8. Kern County APCD Rule 111, Equipment Shutdown, Startup and Breakdown submitted on July 19, 1974. EPA proposed to disapprove this rule on November 1, 1976 (41 FR 47950);
9. Kings County APCD Rule 111, Shutdown, Startup and Breakdown submitted on July 25, 1973 and Rule 111, Shutdown, Startup and Breakdown submitted on June 30, 1972 and previously approved under 40 CFR 52.223 (37 FR 19812). EPA proposed to disapprove these rules on November 23, 1976 (41 FR 51619);
10. Lake County APCD Section 1, Maintenance and Section 2, Malfunction of Equipment of Part VI, Maintenance, Malfunction, Evasion and Inspection submitted on June 30, 1972 and previously approved under 40 CFR 52.223 (37 FR 19812). EPA proposed to disapprove these rules on November 1, 1976 (41 FR 47951);
11. Lake County APCD Rules 500 (Not Titled), 510 (Not Titled) and 511 (Not Titled) submitted on February 10, 1977. EPA proposed to take action on these rules on May 31, 1977 (42 FR 27616);
12. Madera County APCD Rule 402(f), Exceptions submitted on January 10, 1975, and Rule 110, Equipment Shutdown, Startup and Breakdown submitted on June 30, 1972

and previously approved under 40 CFR 52.223 (37 FR 19812). EPA proposed to disapprove these rules on November 23, 1976 (41 FR 51620);

13. Mariposa County APCD Rule 203(j), Exceptions submitted on January 10, 1975 and Rule 4.3(g), Exceptions submitted on February 21, 1972 and previously approved under 40 CFR 52.223 (37 FR 10842). EPA proposed to disapprove these rules on November 1, 1976 (41 FR 17952);

14. Mendocino County APCD Rule 540, Equipment Breakdown submitted on November 10, 1976. EPA proposed to take action on this Rule on June 14, 1977 (42 FR 30396);

15. Merced County APCD Rule 109, Equipment Shutdown, Startup and Breakdown submitted on August 2, 1976. EPA proposed to take action on this rule on June 14, 1977 (42 FR 30396);

16. Northern Sonoma County APCD Rule 540, Equipment Breakdown submitted on November 10, 1976. EPA proposed to take action on this rule on June 14, 1977 (42 FR 30397);

17. Plumas County APCD Rule 203(j), Exceptions submitted on January 10, 1975. EPA proposed to take action on this rule on May 28, 1977 (42 FR 27000);

18. San Luis Obispo County APCD Rule 107, Breakdown or Upset Conditions and Emergency Variances submitted on November 10, 1976. EPA proposed to take action on this rule on June 22, 1977 (42 FR 31609);

19. Shasta County APCD Rule 3:10, Breakdown or Malfunction submitted on July 19, 1974. EPA proposed to disapprove this rule on November 1, 1976 (41 FR 47954);

20. San Bernardino County APCD Rule 430, Breakdown Provisions submitted on June 6, 1977. EPA proposed to take action on this rule on September 16, 1977 (42 FR 46554);

21. Los Angeles County APCD Rule 430, Breakdown Provisions submitted on June 6, 1977. EPA proposed to take action on this rule on September 16, 1977 (42 FR 46554);

22. Riverside County APCD Rule 430, Breakdown Provisions submitted on June 6, 1977. EPA proposed to take action on this rule on September 16, 1977 (42 FR 46554);

23. Southern California APCD Rule 430, Breakdown Provisions submitted on February 10, 1977. EPA proposed to take action on this rule on May 26, 1977 (42 FR 27000);

24. Tehama County APCD Rule 4:17, Upset or Breakdown Conditions submitted on July 19, 1974. EPA proposed to take action on this rule on September 16, 1977 (42 FR 46557);

25. Tulare County APCD Rules 111, Equipment Shutdown, Startup and Breakdown and 402(f), Exceptions submitted on November 10, 1976. EPA proposed to take action on these rules on June 14, 1977 (42 FR 30399);

26. Tuolumne County APCD Rule 404, Upset Conditions, Breakdown or Scheduled Maintenance submitted on February 10, 1977. EPA proposed to take action on this rule on May 31, 1977 (42 FR 27618);

27. Tuolumne County APCD Rule 402(f), Exceptions submitted on June 30, 1972 and previously approved under 40 CFR 52.223 (37 FR 19812). EPA proposed to disapprove this rule on November 1, 1976 (41 FR 47956);

28. Trinity County APCD Rule 540, Equipment Breakdown submitted on November 10, 1976. EPA proposed to take action on this rule on June 14, 1977 (42 FR 30398);

29. Ventura County APCD Rule 32, Upset Conditions, Breakdown or Scheduled Maintenance submitted on July 19, 1974. EPA proposed to take action on this rule on April 29, 1977 (42 FR 21819).

The proposed rulemaking notices provided for a 30 day comment period. Comments were received from the following APCDs: Bay Area; Kern County; Kings County; Stanislaus County; Tulare County and from the South Coast Air Quality Management District (formerly the Southern California APCD). No other comments were received.

Four of the APCDs stated that they were working to revise their malfunction rules to correct deficiencies. EPA has not received any such modifications.

One APCD disagreed that the proposed rule is deficient, stating their rule revision provided adequate measures to prevent abuse of exemption provisions. Another APCD expressed confusion as to EPA's policy regarding Malfunction. EPA's policy as stated in the April 27, 1977 FEDERAL REGISTER (42 FR 21472) is that while it might be appropriate to refrain from enforcing where a malfunction is truly beyond the control of a source, any malfunction provision which allows a regulatory exemption is unacceptable.

EPA is disapproving the APCD malfunction rules previously identified because these rules would permit sources to be exempted from applicable emission limitations. These rules do not satisfy the enforcement imperatives of Section 110 of the Clean Air Act because they render emission limitations potentially unenforceable.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act, as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: January 17, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, is amended by adding paragraphs (c)(21)(ix)(B), (c)(24) (v)(B), (c)(24)(vi)(B), (c)(24)(vii)(B), (c)(26) (iv)(B), (c)(26) (viii)(B), (c)(26)(xiii)(B), (c)(26)(xvi)(A), (c)(31)(xvi)(A), (c)(31)(xvi)(B), (c)(3)(xviii)(A), (c)(32)(iii)(B), (c)(35)(vi)(B), (c)(35)(ix)(A), (c)(35)(xii)(B), (c)(3)(xiv)(A), (c)(35)(xv)(A), (c)(35)(xvi)(A), (c)(35)(xvii)(A), (c)(37)(i)(B), (c)(3)(iv)(A), (c)(37)(v)(A), (c)(39)(i)(A), (c)(39)(ii)(A), (c)(39)(iii)(A), and (c)(39)(iv)(A) as follows:



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RULES AND REGULATIONS

-3275

§ 292a.22 General information.

(a) The Director, Defense Intelligence Agency designates the following systems of records listed in § 292a.23 which are maintained by the DIA for exemptions under the specified provisions of the Privacy Act of 1974 (Pub. L. 93-579).

(b) All systems of records maintained by the DIA will be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 11652, "Classification and Declassification of National Security Information and Material," 8 March 1972 (37 FR 10053, 19 May 1972), and which is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

§ 292a.23 Specific exemptions.

(a) ID: L DIA 0271.

(1) *System name:* Investigations.

(2) *Exemption:* This system of records is exempt from the following provisions of Title 5, U.S.C., Section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* Granting individuals access to information collected and maintained by this Component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to the complete record and the reasons therefore necessitate the exemption of this system of records from the requirements of the other cited provisions. However, the individual may have access only to that information provided by himself. The files contain properly classified information under Executive Order 11652 and are required by the Executive Order to be kept secret in the interest of national defense.

(b) ID: L DIA 0272.

(1) *System name:* Complaints.

(2) *Exemption:* This system of records is exempt from the following provisions of Title 5, U.S.C., Section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* Granting individuals access to information collected and maintained by this Component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffective investigative techniques, sources and methods used by this component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to the complete record and the reasons therefore necessitate the exemption of this system of records from the requirements of the other cited provisions. However, the individual may have access only to that information provided by himself. The files contain properly classified information under Executive Order 11652 and are required by the Executive Order to be kept secret in the interest of national defense.

[FR Doc. 78-1957 Filed 1-23-78; 8:45 am]

[3710-92]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS,
DEPARTMENT OF THE ARMY

PART 207—NAVIGATION REGULATIONS

Los Angeles and Long Beach Harbors, Calif.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This rule revokes regulations which establish naval restricted areas in Los Angeles and Long Beach Harbors, Calif. The Commanding Officer, Naval Support Activity, Long Beach, Calif., has advised that the restricted areas are no longer needed.

EFFECTIVE DATE: January 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph T. Eppard, 202-693-5070, or write Office of the Chief of Engineers, Forrestal Building, Washington, D.C. 20314, Attn.: DAEN-CWO-N.

SUPPLEMENTARY INFORMATION: Regulations were established by the Secretary of the Army under 33 CFR Part 207.616 governing the use, administration, and navigation of two areas designated as naval restricted areas in Los Angeles and Long Beach Harbors, Calif. The restricted areas are no longer needed by the Naval Support Activity, Long Beach, Calif., and accordingly, are hereby revoked as set forth below:

The Department of the Army has determined that publication of this revocation in the proposed rulemaking section of the FEDERAL REGISTER is unnecessary since this will result in the removal of a restriction on a waterway.

§ 207.616 [Revoked]

(40 Stat. 266; 33 U.S.C. 1.)

NOTE.—The Department of the Army has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 6, 1978.

CHARLES R. FORD,
Acting Assistant Secretary
of the Army (Civil Works).

[FR Doc. 78-1986 Filed 1-23-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION
AGENCY

SUBCHAPTER C—AIR PROGRAMS
[FRL 846-4]

PART 52—APPROVAL AND PROMULGATION
OF IMPLEMENTATION PLANS

California Plan Revision: Malfunction
Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to disapprove the malfunction rules and regulations of twenty-seven Air Pollution Control Districts (APCDs) in California. These regulations were submitted by the Governor's designee for inclusion in the California State Implementation Plan (SIP). The intended effect of this action is to correct deficiencies in the SIP.

EFFECTIVE DATE: February 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn Davis, Acting Director, Air and Hazardous Materials Division, Envi-